

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BERNARD MARIO CLARK,
(TDCJ-CID #1487342)

Petitioner,
vs.

RICK THALER,
Respondent.

CIVIL ACTION H-10-3037

MEMORANDUM ON DISMISSAL

On August 24, 2010, Bernard Mario Clark filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, Civil Action Number 4:10-3035, challenging his state-court conviction for aggravated assault with a deadly weapon (Cause Number 44740 in the 268th Judicial District Court of Fort Bend County, Texas). Also on August 24, 2010, Clark filed what was docketed in the present case, Civil Action No. 10-3037, as a second petition for a writ of habeas corpus form challenging the same conviction for aggravated assault with a deadly weapon. In both petitions, Clark stated that he is also challenging his parole revocation.

Because the second filing did not contain a civil action number, it was docketed as a second petition for a writ of habeas corpus under 28 U.S.C. § 2254. It appears that Clark intended to file a copy of the petition for a writ of habeas corpus along with his original petition filed in 4:10-3035, not file a second petition.

On July 1, 2010, Clark had filed Civil Action Number 4:10-2341, presenting the same claims that are presented in this case and in Civil Action No. 10-3035. The federal court dismissed that

petition as unexhausted on July 15, 2010. Clark also filed yet another similar federal petition in Civil Action No. 10-3046, which the court dismissed as duplicative and unexhausted.

This civil action filed by Bernard Mario Clark, (TDCJ-CID #1487342), is dismissed without prejudice as duplicative of a pending case and improvidently filed. Clark's motion for subpoena duces tecum, (Docket Entry No. 2), and motion for trial transcript, (Docket Entry No. 5), are denied as moot. Any remaining pending motions are denied as moot.

SIGNED on October 13, 2010, at Houston, Texas.



Lee H. Rosenthal
United States District Judge